

1 TERRY GODDARD  
2 Attorney General  
3 Firm State Bar No. 14000

4 Kim S. Anderson  
5 State Bar No. 010584  
6 Assistant Attorney General  
7 1275 West Washington  
8 Phoenix, Arizona 85007  
9 Telephone: (602) 364-0402  
10 Fax: (602) 364-0700  
11 EducationHealth@azag.gov

12 Attorneys for the Arizona State Board for Charter Schools

13 **BEFORE THE ARIZONA STATE BOARD**  
14 **FOR CHARTER SCHOOLS**

15 In the matter of:

16 **ASCENDING ROOTS SCHOLASTIC &**  
17 **ATHLETIC PREMISE, INC.**  
18 (a non-profit corporation)

19 and

20 **ASCENDING ROOTS SCHOLASTIC &**  
21 **ATHLETIC PREMISE**  
22 (a charter school).

No. 08F-RV-002-BCS

23 **RESPONSE IN OPPOSITION TO**  
24 **MOTION FOR REHEARING OR**  
25 **REVIEW**

26 This Response is filed in opposition to the Motion of Ascending Roots Scholastic & Athletic Premise, Inc. ("Ascending Roots") and Ascending Roots Scholastic & Athletic Premise, a charter school ("the School"), for Rehearing or Review. Ascending Roots and the School have failed to allege a sufficient basis for rehearing or review in this matter. Ascending Roots' allegations that "substantial irregularities occurred," and that the Administrative Law Judge ("ALJ") "refus[ed] to allow the charter school to participate in the hearing," thereby

1 violating A.R.S. § 41-1092.07(B) and (D),<sup>1</sup> are without merit. Also without merit are  
2 Ascending Roots' allegations that "the findings and conclusions of the Administrative Law  
3 Judge, adopted by this Board, were incorrect" or that its Motion presents defenses and  
4 explanations that rebut the Board's findings and would provide a basis upon which the Board  
5 would reconsider its order revoking Ascending Roots' charter.

6 **A. Background**

7 The School is a charter school established pursuant to A.R.S. § 15-181 *et seq.* The  
8 Charter for the School is held by Ascending Roots, a non-profit organization organized under  
9 the laws of the State of Arizona. The Charter Contract was signed in May 2002 by Kisha  
10 Spellman White and Rita White, who serve as joint charter representatives. Pursuant to A.R.S.  
11 § 15-183 and the Charter Contract, the Arizona State Board for Charter Schools ("the Board")  
12 sponsors Ascending Roots to operate one school site to serve students in grades kindergarten  
13 through eighth. For the 2008-2009 school year, Ascending Roots is currently reporting an  
14 enrollment of 53 students.

15 The School provides no information as to the source of many of the allegations it makes  
16 in the "Background" section of its Motion. The School's 2008 School Report Card reflects the  
17 School's population to be predominantly minority and economically disadvantaged. The  
18 School's 2008 School Report Card also reflects Arizona Instrument to Measure Standards  
19 (AIMS) results for Spring of 2008 as follows: Math -- 24% passing rate; Reading --29%  
20 passing rate; Writing --35% passing rate.

21 In regard to the Motion's allegations regarding site visits conducted at the School  
22 during the last two years, site visits conducted at this school, as with any charter school  
23 sponsored or monitored by the Board, are conducted pursuant to the Board's oversight  
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<sup>1</sup> The Motion incorrectly cites to A.R.S. § 40-1092.07(B) and (D).

responsibilities prescribed by statute and rule. The Board has the authority to conduct a site visit of any charter school it sponsors at any time pursuant to A.R.S. § 15-183(R) and Arizona Administrative Code R7-5-303. Board staff vehemently denies the School's allegations that it has "questioned" the School to "explain why the School has such a high percentage of black students" or that Board staff collaborated with the Federal Bureau of Alcohol, Tobacco, and Firearms ("ATF") in launching a baseless investigation regarding firearms at the School. In Spring 2004, Charter Board staff's communication with and site visit to the School was prompted, in part, by information the staff received from the ATF regarding the arrest of one of the School's teachers. The "Background" Section of Ascending Roots' Motion seems designed more to present self-serving or inflammatory statements than to provide a background that has any relationship to the relevant facts preceding the Board's findings, conclusions and order in this matter.

#### **B. The Proceedings**

Ascending Roots had more than ample opportunity to secure counsel for the charter revocation hearing. Ascending Roots also had ample opportunity, in lieu of securing counsel, to meet the requirements of Arizona Supreme Court Rule 31(d)(11) ("Ariz. Sup. Ct. R. 31(d)(11)"), thereby enabling Ms. White or Ms. Spellman, as Ascending Roots' Vice-President and President, respectively, to represent Ascending Roots throughout the charter revocation proceedings. At the charter revocation hearing held on July 16, 2008, Ms. White made conflicting statements to the ALJ regarding her authority under Ariz. Sup. Ct. R. 31(d)(11) to represent Ascending Roots. While Ms. White ultimately declined to represent Ascending Roots during the proceedings held on July 16, 2008, she did act as representative of Ascending Roots during the July 17, 2008 proceedings.

Ascending Roots knew on April 1, 2008 that the hearing regarding the proposed revocation of its charter had been set for July 15, 16 and 17, 2008. In early June 2008, there

1 being no evidence in the record of the Office of Administrative Hearings (“OAH”) that  
2 Ascending Roots had retained counsel, counsel for the Board filed a Motion on June 6, 2008,  
3 requesting a prehearing conference to, in part, “address representation of charter operator as  
4 authorized by Rule 31 of the Rules of the Arizona Supreme Court.” *See Motion for*  
5 *Prehearing Conference.*

6 By Order dated June 9, 2008, ALJ Diane Mihalsky set a prehearing conference on June  
7 17, 2008. In her Order, ALJ Mihalsky clearly advised Ascending Roots of its obligations  
8 under Ariz. S. Ct. R. 31. *See Attachment 1 – Order Setting Prehearing Conference.* ALJ  
9 Mihalsky ordered that:

10 . . . . before the scheduled prehearing conference, Respondent’s  
11 representation shall provide notice to the Administrative Law  
12 Judge and to the Board’s attorney of his or her appearance in  
13 this matter. **Failure to designate a representative who meets**  
14 **the requirements of Ariz. R. S. Ct. 31 may preclude**  
**Respondent from offering evidence to defend its charter at**  
**the hearing.** (emphasis added) *Id.* at 2.

15 At the prehearing conference held on June 17, 2008, no-one appeared for Ascending Roots.  
16 *See Attachment 2 – Order Vacating Hearing Date on July 15, 2008 and Rescheduling Fair*  
17 *Hearing for July 16 and 17, 2008.* ALJ Mihalsky’s Order following the prehearing conference  
18 reflected that the charter revocation hearing was set for “a fair hearing on the merits on July  
19 16, 2008 at 9:00 a.m. and, if the matter does not conclude on that date, setting a further hearing  
20 on July 17, 2008 at 9:00 a.m.” *Id.* at 1. A mere two days before the hearing, Ascending Roots  
21 requested a continuance. The ALJ properly denied this request.

23 Ascending Roots’ allegation that the ALJ “refused to let Ms. White participate unless  
24 and until a vote was taken formally authorizing her to represent the school” (Motion, page 4 at  
25 par. 11) is not supported by the record. Nor is Ascending Roots’ allegation that “[s]ince Ms.  
26 White was unable to call a Board meeting on such notice, she was not allowed to participate”

1 supported by the record. (Motion, page 4 at par. 11) On July 16, 2008, the ALJ asked Ms.  
2 White for her avowal that Ascending Roots had authorized Ms. White to represent it at the  
3 charter revocation hearing.

4 ALJ: Has the corporation authorized you to represent it  
5 here, Ms. White?

6 Ms. White: No. I just was called and asked to. Because I'm a  
7 co-owner, I was asked to come to this meeting.

8 ALJ: Well, it's not a meeting

9 Ms. White: I'm sorry. This hearing.

10 ALJ: Who asked you?

11 Ms. White: Kisha Spellman White, Bernice Johnson, who  
12 is—I'll just go ahead and do it, Your Honor. I  
13 will do it.

14 ALJ: Your willingness to do it—I mean, **I need to have**  
15 **some avowal by you that the corporation**, the  
16 other officers of the corporation, whoever is  
17 running the corporation, **has authorized you to**  
18 **represent it here today** and that you are not  
19 being paid separately for this representation.  
(emphasis added)

20 Ms. White: No, I'm not being paid. Being co-owner, I chose  
21 to come.

22 ALJ: That's not what I'm asking. What I'm asking is:  
23 Have the other officers, the other decision  
24 makers, of the corporation authorized you to  
25 represent it here such that anything you say is on  
26 behalf of the corporation?

Ms. White: No, Your Honor, they did not.

ALJ: In that case, I can't allow you to represent the  
corporation. Did you get my order on Rule 31?

Ms. White: Yes.

1 ALJ: I quoted the language of the rule for you on what  
2 I would need for you to be able to represent the  
3 corporation, and you're telling me that you don't  
4 have that authority. You've taken care of the fact  
5 that you aren't getting paid anything special to  
6 appear here, but the first requirement is that the  
7 representation be authorized.

8 Ms. White: Your Honor, then I'm not qualified to do this.

9 ALJ: Okay. Then I will hear The Board's case. You  
10 will not be allowed to cross-examine The Board's  
11 witnesses. There is a second day of hearing set  
12 for tomorrow. We can go forward. You will  
13 need to get the authority of the corporation, of the  
14 other officers, or the decision-making body of the  
15 corporation, to represent it here. Because The  
16 Board bears the burden of proof, The Board will  
17 go first. I cannot allow you to cross-examine The  
18 Board's witnesses because that is part of  
19 representing the corporation. You may remain.

20 Transcript of the July 16, 2008 charter revocation hearing, TR, 07/16/08, page 15, line 10 to  
21 page 17, line 11. The ALJ then recessed the hearing for 15 minutes upon Ms. White's  
22 statement that she wanted to "make a couple phone calls" to "get this straightened out." TR,  
23 07/16/08, page 17, lines 12-19. Following the recess, there was further discussion regarding  
24 Ms. White's appearance in the matter:

25 ALJ: We're back on the record. Ms. White, has the  
26 corporation authorized you to represent it?

27 Ms. White: They've stated that on their meeting notice, it said  
28 Kisha Spellman White and Rita White, as  
29 everything else is mailed out to us or meeting. **So**  
30 **they did give me permission to do what I need**  
31 **to do** but I was -I just would like The Board to go  
32 ahead, and I need to go and speak with Ms.  
33 Simpson, who was going to be our lawyer today,  
34 and just let The Board give their testimony, and  
35 come back tomorrow. (emphasis added)

1 ALJ: So you're not going to represent the corporation  
2 today?

3 Ms. White: No. I'm just going to be here, or do I need to be  
4 here?

5 ALJ: It's a public hearing. It is your choice whether or  
6 not to be here.

7 TR, 07/16/08, page 17, line 20 to page 18, line 12. The record clearly reflects that Ms. White  
8 declined to represent Ascending Roots on July 16, 2008. Ms. White then exited the hearing  
9 room during the Board's Opening Statement (TR, 07/16/08, page 25, line 24 to page 26, line  
10 1), returned for the majority of the testimony of the Board's first witness, Andrea Leder, (TR,  
11 07/16/08, page 27, line 21-22), then exited again during the testimony of the Board's second  
12 witness, Karen LeGrand. (TR, 07/16/08, page 43, line 2-3).

13  
14 At the hearing on July 17, 2008, Ms. White produced a document that stated as  
15 follows:

16 Kisha Spellman and/or Rita White are the representatives for  
17 Ascending Roots Charter School and given authority to speak on  
18 behalf of the school during the Revocation hearing dated July 15,  
19 16&17. Notice is hereby given on July 10, 2008.

20 Exhibit 20. The document was dated July 10, 2008 and reflects a meeting on that same date.  
21 Accordingly, despite what appears to be authorization, in writing and provided by Ascending  
22 Roots to Ms. White on July 10, 2008, to represent the corporation for the entirety of the  
23 charter revocation hearing, Ms. White declined to do so during the proceedings held on July  
24 16, 2008.

25 There is no evidence in the record to support Ascending Roots' allegations that Ms.  
26 White was "unable to question any of the witnesses who had testified the day before."  
(Motion, page 4, par. 11). At no time did Ms. White request the Board's attorney to make

1 available any of the witnesses called by the Board the previous day. Moreover, two of the  
2 Board's three witnesses, DeAnna Rowe and Andrea Leder, were present in the hearing room  
3 on July 17, 2008 and could have been called as witnesses by Ms. White.

4 On July 17, 2008, Ms. White presented two witnesses and introduced four exhibits.  
5 TR, 07/17/08, page 100, line 19 to page 132, line 9. Ms. White declined to testify or to cross-  
6 examine the Board's rebuttal witness. TR, 07/17/08, page 129, line 25 to page 130, line 1;  
7 TR, 07/17/08, page 135, line 22 to page 136, line 1. Ms. White made a closing statement.  
8 TR, 07/17/08, page 146, line 20 to page 151, line 11.

10 Ascending Roots' allegations that it "was caught off guard by the hearing" is also  
11 unsupported by the record. (Motion, page 4, par. 12) Ascending Roots received the Notice of  
12 Intent to Revoke Charter and Notice of Hearing on March 25, 2008 and April 1, 2008,  
13 respectively. Moreover, the Board's filing of a Motion for a Pre-hearing Conference on June  
14 6, 2008 to "set a date prior to the hearing in this matter for the exchanging of lists of witnesses  
15 and exhibits" and to "obtain stipulations regarding testimony, exhibits, facts or law" was a  
16 clear indication that the charter revocation hearing was proceeding. Further, at the prehearing  
17 conference on June 17, 2008, counsel for the Board advised the ALJ that the allegations  
18 regarding the financial audit and the employee fingerprint clearance had been resolved and  
19 "estimated that this matter would require only a day for hearing and requested that the first  
20 scheduled day of hearing be cancelled". The ALJ's prehearing conference order "set a fair  
21 hearing on the merits on July 16, 2008 at 9:00 a.m." and noted that "if the matter does not  
22 conclude on that date, setting a further hearing on July 17, 2008 at 9:00 a.m." *See Attachment*  
23 2. Clearly, the matter was proceeding to a charter revocation hearing. There is no basis for  
24 Ascending Roots' allegations that "[t]he School believed that revocation was no longer being  
25  
26



1 sought” or for its belief that “the hearing was simply to appear and have it dismissed.” On  
2 July 1, 2008, the Board’s Executive Director sent a letter via email to Ascending Roots  
3 advising them of yet unresolved issues pertaining to the Notice of Intent to Revoke Charter  
4 and that “[t]he Board is prepared to provide testimony and present evidence regarding these  
5 areas of noncompliance at the scheduled charter revocation hearing before Judge Diane  
6 Mihalsky at the Office of Administrative Hearings beginning on July 16, 2008 at 9:00 a.m.”  
7 *See Attachment 3 – Letter dated July 1, 2008.* On July 9, 2008, the Board’s Executive  
8 Director again sent an email to Ascending Roots, advising them of the issues pertaining to the  
9 Notice of Intent to Revoke Charter that continued to remain unresolved. *See Attachment 4 -*  
10 *Exhibit 18 (#503-505).* Ms. Rowe also had contact with Ms. White at the Board’s monthly  
11 meeting on July 14, 2008. Following Ms. Rowe’s inquiry of Ms. White as to whether  
12 Ascending Roots had retained an attorney for the July 16, 2008 charter revocation hearing,  
13 Ms. White informed Ms. Rowe that Ms. Spellman would not be available on July 16, 2008.  
14 Ms. Rowe referred Ms. White to the OAH website for information on requesting a  
15 continuance.  
16

17  
18 At the hearing on July 16, 2008, Ms. White was asked by the ALJ if the Board had  
19 given her any assurances that the charter revocation hearing was not going forward. Ms.  
20 White replied, “They never did that.”  
21

22 ALJ: . . . . However, if The Board has given you some  
23 assurances that the hearing is not going to go  
24 forward –

25 Ms. White: They never did that.

26 ALJ: --you would have been given lots of time, as  
much time as you needed, to come up with  
information, and I can hear that evidence.

1 Ms. White: They never did that. I'm sorry if that's  
2 misunderstood.

3 TR, 07/16/08, page 14, lines 15-22.

4 Ascending Roots was not deprived of its right to be represented by counsel or to  
5 proceed without counsel under Ariz. Sup. Ct. R. 31(d)(11). Nor was Ascending Roots  
6 deprived of its right to submit evidence or to cross-examine witnesses at the charter revocation  
7 hearing. Ascending Roots was given ample opportunity to respond and present evidence and  
8 argument on all relevant issues.

9  
10 **C. The Board's Findings and Conclusions**

11 **1. Hours of Instruction**

12 Arizona Revised Statutes § 15-901(A)(2)(b)(i) requires that, beginning in fiscal year  
13 2005-2006, and each year thereafter, seventh and eighth grade students enrolled in a full-time  
14 instructional program receive a total of at least 1,068 instructional hours. The record  
15 establishes that Ascending Roots failed to comply with this statutory mandate, despite having  
16 been provided ample opportunity to do so. Ascending Roots' Motion alleges that it was not  
17 given credit for a thirty minute time period at the end of the day in which the School reviews  
18 the day's instruction with students and that this is the basis for the instructional hours'  
19 shortfall. (Motion, page 6, par. 18). This is clearly not supported by the record. The  
20 calculations of instructional hours were conducted by Andrea Leder, the Board's Government  
21 and Financial Services Manager, and were based on Ascending Roots' 2007-2008 School  
22 Calendar (Exhibit 2, #210), classroom instruction schedules obtained during her February  
23 2008 site visit (Exhibit 2, # 211 and 212), the first revised bell schedule submitted by  
24 Ascending Roots to the Board on June 9, 2008 (Exhibit 3, # 214 and 215), and the second  
25 revised bell schedule submitted by Ascending Roots to the Board on July 15, 2008 (Exhibit  
26 18, #503-506). The classroom instructional schedules for grades 5 through 8, provided to Ms.

Leder in February 2008 by Mr. Dennis and Ms. Deb, teachers at the School, reflect a 30 minute period at the end of the day on Mondays through Thursdays for “clean up and review homework for the evening.” *See Attachment 5 - Exhibit 2 (# 211 and 212)* Regardless of any alleged disagreement between the Board and the School regarding whether its 30 minute review sessions at the end of the day constitute “instruction,” this 30 minute period **was included** in Ms. Leder’s calculations of the number of hours of instruction that Ascending Roots provided to its 7<sup>th</sup> and 8<sup>th</sup> grade students.

The Witness: . . . . Pages 211 and 212 contain the schedules I obtained during my site visit to the school for the 5<sup>th</sup> through 8<sup>th</sup> grade students. Based on these schedules, I determined that the students received 340 minutes of instruction daily, Monday through Thursday, and 150 minutes of instruction on Fridays<sup>2</sup>.

. . . . As you can see . . . . the schedule that I obtained during my visit to Ascending Roots in February provided Ascending Roots' 7<sup>th</sup> and 8<sup>th</sup> graders with a total of approximately 912 hours of instruction, which is nearly 156 hours short of the statutorily required 1,068 required hours.

TR, 07/16/08, page 35, lines 2-8 and page 36, lines 13-18.

On June 9, 2008, Ascending Roots provided a (first) revised bell schedule to the Board, stating, “Here is the bell schedule that we implemented and adopted on Feb 21, 2008.” Exhibit 3 (# 214 and 215). The first revised bell schedule did not reflect a thirty minute time period at the end of the day in which the School reviews the day’s instruction with students. Exhibit 3 (#215). It was the testimony of Ms. Leder that the first revised bell schedule did not provide Ascending Roots’ 7<sup>th</sup> and 8<sup>th</sup> grade students with the requisite number of hours of instruction.

<sup>2</sup> Pursuant to A.R.S. § 15-901(A)(2)(b)(i), the lunch period was not included as part of the instructional hours.

1 By Ms. Anderson: Following your receipt and review of what is  
2 contained in Exhibit 3, did you make a  
3 determination as to whether Ascending Roots  
4 - if they had revised their schedule as reflected  
5 in this exhibit as of February 21, 2008, did  
6 you make a determination as to whether,  
7 under those conditions, they were providing  
8 the requisite number of hours of instruction  
9 for its 7<sup>th</sup> and 8<sup>th</sup> graders for the 2007-2008  
10 school year?

11 [Ms. Leder]: Yes, I did. That was that the revised schedule  
12 did not provide Ascending Roots' 7<sup>th</sup> and 8<sup>th</sup>  
13 graders with enough instructional hours.

14 . . . . Again, the only time that I removed from  
15 that calculation was the lunch period on this  
16 schedule.

17 . . . Even with the revised schedule, the school  
18 still fell short of providing the required  
19 number of instruction hours for its 7<sup>th</sup> and 8<sup>th</sup>  
20 graders by nearly 28 hours.

21 TR, 07/26/08, page 33, lines 12-24; page 37, lines 2-3; page 37, line 24 to page 38, line 1.

22 On July 11, 2008, Ascending Roots provided a (second) revised Friday bell schedule to  
23 the Board, subsequently stating that it was the Friday schedule for the 2007-2008 school year.  
24 Exhibits 18 (#503-506) and 19 (#507). It was the testimony of Ms. Leder that the second  
25 revised bell schedule did not provide Ascending Roots' 7<sup>th</sup> and 8<sup>th</sup> grade students with the  
26 requisite number of hours of instruction.

Ms. Leder: . . . . Incorporating this schedule into the  
calculation actually creates a shortfall of a  
little over 38-and-a-half hours rather than the  
nearly 28 hours that we talked about earlier.

TR, 07/16/08, page 40, lines 17-20.

It was the testimony of Ms. Leder that Ascending Roots was not providing the  
requisite number of hours of instruction for its 7<sup>th</sup> and 8<sup>th</sup> grade students for the 2007-2008

1 school year under **any** of the three schedules provided by Ascending Roots. TR 07/16/08,  
2 page 40, line 21 to page 41, line 1.

3 Ascending Roots' Motion alleges that the School "held classes on weekends".  
4 (Motion, page 6, par. 20) However, neither the School's 2007-2008 School Calendar (Exhibit  
5 2, #210) nor any of the three schedules provided by the School (Exhibit 2, #211 and 212;  
6 Exhibit 3, #215; Exhibit 18, #506) reflect classes held on weekends. Moreover, Cory  
7 O'Bannon, who testified on behalf of Ascending Roots regarding its bell schedule, provided  
8 no testimony that Ascending Roots held classes on weekends.  
9

10 The record clearly supports the Board's determination that Ascending Roots violated  
11 both statute and the charter contract by failing to provide an instructional program that met for  
12 a total of at least 1,068 hours for its 7<sup>th</sup> and 8<sup>th</sup> grade students.  
13

## 14 **2. No Child Left Behind Act ("NCLB") Funds**

15 As the recipient of NCLB funds during the 2005-2006 school year, Ascending Roots  
16 was required to submit documentation to the Arizona Department of Education ("ADE") that  
17 adequately identified its procedures for identifying and assessing English Language Learner  
18 ("ELL") students. *See* 20 U.S.C. §§ 6825 and 6826. The record establishes that Ascending  
19 Roots failed to do so, despite having been provided ample opportunity. Ascending Roots'  
20 Motion alleges that the School did not receive federal funds for ELL students and, therefore,  
21 was not required to comply with requirements for that funding. This is clearly not supported  
22 by the record. It was the clear and uncontroverted testimony of Karen LeGrand, Title I  
23 Specialist for the ADE, that during **2005-2006**, Ascending Roots received federal funds under  
24 the NCLB and, as a result, was required to submit a NCLB Programmatic Monitoring Cycle 6  
25 packet for that year.  
26

1 Q: In the fiscal year 2005-2006, did Ascending  
2 Roots receive Federal funds under the No  
3 Child Left Behind Act?

4 [Ms. LeGrand]: Yes, they did. TR, 07/16/08, page 43, lines  
5 11-13

6 Q: As a recipient of No Child Left Behind funds  
7 in fiscal year 2005-2006, was Ascending  
8 Roots required to submit what's called a No  
9 Child Left Behind Programmatic Monitoring  
10 Cycle Six packet for fiscal year 2005-2006?

11 [Ms. LeGrand]: Yes, they were. TR, 07/16/08, page 44, lines  
12 3-7.

13 Q: Is this packet required to include procedures  
14 for identifying and reclassifying English  
15 Language Learner students for the Cycle Six  
16 monitoring to the Department of Education  
17 for the 2005-2006 school year?

18 [Ms. LeGrand]: Yes, it is. TR, 07/16/08, page 44, lines 20-24.

19 While Ascending Roots did, in fact, submit a NCLB Programmatic Monitoring Cycle  
20 6 Packet for 2005-2006, there were compliance areas and items that Ascending Roots failed to  
21 include or to provide sufficient information on in its Packet. Exhibit 12 (#489-491). The  
22 evidence shows that, beginning March 22, 2006, Ascending Roots was advised repeatedly by  
23 ADE that the Cycle 6 Packet it submitted was deficient and, therefore, not in compliance.  
24 Exhibits 13, 14, 15, 16, and 17. Despite being given multiple opportunities to comply,  
25 Ascending Roots failed to do so. Moreover, the record reflects that Ascending Roots failed to  
26 offer into evidence any testimony or exhibits, either protesting that it had not received NCLB  
funds during the 2005-2006 school year or that it had, in fact, provided its procedures for  
identifying and assessing ELL students. Whether Ascending Roots requested or received  
NCLB or any other federal funds for the school years 2007-2008 and 2008-2009 is irrelevant  
to the Board's findings as to the 2005-2006 school year. The "paperwork" submitted by

1 Ascending Roots shortly before the charter revocation hearing was reviewed by ADE and  
2 found to be “out of compliance”. TR, 07/16/08, page 52, line 7 to page 54, line 19; Exhibit 17  
3 (#500).

4 The record clearly supports the Board’s determination that Ascending Roots violated  
5 federal statute and regulation and its charter contract regarding its NCLB funds by failing to  
6 submit a Cycle 6 packet that adequately identified its procedures for identifying and  
7 reclassifying ELL students and measuring their progress.

### 8 **3. Alignment with Arizona Academic Standards**

9 Arizona Revised Statutes § 15-183(E)(3) and the charter contract require that  
10 Ascending Roots provide a comprehensive program of instruction aligned to the Arizona  
11 Academic Standards. Moreover, Ascending Roots affirmed in its Declaration of Curricular  
12 and Instructional Alignment to the Arizona Academic Standards that it had adopted a  
13 curriculum aligned with the Arizona Academic Standards and was providing instructional  
14 materials aligned to the Standards in the areas of language arts, writing, mathematics, science  
15 and social studies for the 2007-2008 school year. Exhibit 5 (#217 and 218). In February,  
16 2008, Deanna Rowe, Executive Director of the Board, conducted a site visit to the School,  
17 observing the four classrooms in operation, observing students completing assignments,  
18 speaking with two of the teachers who provided instruction for the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grades,  
19 and reviewing instructional material. Ms. Rowe has a master’s degree in education, with an  
20 emphasis in curriculum and instruction, and has extensive experience in the development and  
21 implementation of curriculum aligned to the Arizona Academic Standards. TR, 07/16/08,  
22 page 56, lines 3-20 and page 57, lines 4-21. Ms. Rowe determined that Ascending Roots was  
23 not teaching a curriculum that was aligned to or incorporated the Arizona Academic Standards  
24 by content area at each grade level.  
25

26 Q: Based on what you observed and the  
discussions you had with the teachers, did

1 you reach a determination as to whether  
2 Ascending Roots was teaching a  
3 curriculum that was aligned to or  
4 incorporated the Arizona Academic  
Standards by content area at each grade  
level?

5 [Ms. Rowe]: I did.

6 Q: What was your determination and on what  
7 did you base it?

8 [Ms. Rowe]: My determination was that they did not  
9 provide a comprehensive program for all  
10 of the reasons and examples that I  
11 previously outlined. Specifically, that by  
12 grouping students in grade level  
13 combinations of 5<sup>th</sup>/6<sup>th</sup> or 7<sup>th</sup>/8<sup>th</sup> and not  
14 delineating the instruction that occurs for  
15 those grade levels, that they would not be  
covering the concepts, performance  
objectives, and the required instruction  
that would need to happen for those grade  
levels. TR, 07/16/08, page 67, line 24 to  
page 68, line 15.

16 In its Motion, Ascending Roots alleges that it uses SRA textbooks, thereby satisfying Arizona  
17 Academic Standards. Ms. Rowe testified that at her February 2008 site visit, teachers shared  
18 that the instructional materials they were using were “some SRA materials, some Prentice  
19 Hall materials,” as well as some of their own materials. TR, 07/16/08, page 79, lines 8-20.  
20 Ascending Roots presented an exhibit (Exhibit B) and elicited testimony from one of its  
21 witnesses regarding some use of SRA materials at the School. Specifically, Celeste Holliday,  
22 the School’s English language arts reading teacher, testified that the School “has SRA books  
23 in the room” and that “[w]e have the SRA in math, science, and social studies.” TR, 07/17/08,  
24 page 121, line 6; TR, 07/17/08, page 125, lines 11-12. Ascending Roots further presented an  
25 exhibit pertaining to its Social Studies instruction. Exhibit C.  
26



1 It was the testimony of Ms. Rowe during rebuttal that, based on her review of the  
2 School's Exhibits B and C and the testimony presented by Ascending Roots, it remained her  
3 opinion that in the 2007-2008 school year, Ascending Roots did not provide a comprehensive  
4 program of instruction with a curriculum aligned to Arizona Academic Standards for grades 5,  
5 6, 7, and 8 for science and social studies. TR, 07/17/08, page 132, line 22 to page 133, line  
6 12.

7 Ms. Rowe: The information provided in Exhibit B . . . . does  
8 not provide any evidence that the SRA materials  
9 are aligned to the specific content of social studies  
10 or science for 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> grade. It doesn't  
11 provide anything that says it aligns specifically to  
12 the concepts, the strands, and performance  
13 objectives for each of those grade levels, in each  
14 of those content areas, to the State Academic  
15 Standards. Further, it doesn't provide any  
16 evidence of when the materials were actually  
17 taught or evidence that they were actually taught  
18 as was requested in the Corrective Action Plan.  
19 TR, 07/17/08, page 133, line 14 to page 134, line  
20 4.

21 . . . . [Exhibit C] talks about 7<sup>th</sup> grade teaching  
22 Life and Earth Science, and 8<sup>th</sup> grade teaching  
23 Earth and Physical Science, but it doesn't talk  
24 about the other strands or concepts that are listed  
25 within the Arizona standards. TR, 07/17/08, page  
26 135, lines 11-15.

20 The "Corrective Action Plan" referred to by Ms. Rowe was requested of the School on April 4,  
21 2008. Exhibit 7 (#222-225). Specifically, as to curriculum, Ms. Rowe requested a corrective  
22 action plan that included documentation evidencing the School's curriculum and resources  
23 used for grades 5, 6, 7 and 8 in science and social studies instruction. Exhibit 7 (#222-225). In  
24 response, on June 6, 2008, Ascending Roots provided a 160-page excerpt from the  
25 OdysseyWare instructional program and informed the Board, "Here is the program that we  
26 use." Exhibit 8 (#226-385). Ms. Rowe testified that, when visiting the School in February  
2008, she neither observed the use of OdysseyWare for instruction at the School nor did she

1 observe students on computers. TR, 07/16/08, page 78, line 23 to page 79, line 4. Moreover,  
2 nor did Ms. Rowe observe computers or a computer lab during her visit to the School. TR,  
3 07/16/08, page 79, lines 5-7. Further, it was the testimony of Ascending Roots' witness, Cory  
4 O'Bannon, that the School's computers had been stolen in the beginning of December 2007.

5 Q: You said that at some point in the 2007-  
6 2008 school year, the school was robbed  
7 of their computers?

8 [Mr. O'Bannon]: Yes, along with other things.

9 ALJ: When was that, again.

10 [Mr. O'Bannon]: I believe it was in November, December.

11 ALJ: During the 2007, this past year?

12 [Mr. O'Bannon]: 2007

13 \* \* \*

14 Ms Anderson: So it was probably the first part of  
15 December of 2007 that the computers  
16 were stolen from the school; is that what  
you're saying?

17 [Mr. O'Bannon]: Correct. TR, 07/17/08, page 112, line 19  
18 to page 113, line 14.

19 In response to Ascending Roots' claim that it used OdysseyWare as its instructional  
20 program, on June 6, 2008, Ms. Rowe sent the School a letter, acknowledged receipt of the  
21 OdysseyWare document and requested that the School provide the following:

- 22 • Documentation to support the purchase and training for the implementation of  
23 OdysseyWare products.
- 24 • Description of the facility used and scheduled use of facility for the  
25 implementation of the computer based instructional program.
- 26

- The breakout of units, the time spent on each unit, a calendar of when each unit was taught, and evidence of the completion of unit summative assessments/experiments, etc. Exhibit 10 (#408-411).

Ascending Roots' response was that "a computer lab will be set up for use of the computers that will allow students to learn on at individualized pace". Exhibit 11 (#412). Ascending Roots also provided a written quote from OdysseyWare dated February 13, 2008, in which OdysseyWare offered to provide the School with 20 simultaneous licenses for OdysseyWare and Premium Training, for a total cost of \$21,015.61. Exhibit 11 (#413). Moreover, in her subsequent contact with the OdysseyWare sales representative on June 11, 2008, Ms. Rowe was advised that Ascending Roots had not yet purchased anything and that no training on OdysseyWare had yet been provided to any of Ascending Roots' teachers. TR, 07/16/08, page 86, line 9 to page 87, line 3 and lines 16-24. The references to OdysseyWare contained in the Board's Order are not "misplaced" and are, in fact, supported by substantial evidence contained in the record.

The record clearly supports the Board's determination that Ascending Roots violated both Arizona statute and its charter contract by failing to provide a curriculum in science and social studies that was aligned with the Arizona Academic Standards.

#### **D. Conclusion**

The record does not support Ascending Roots' assertions that the charter revocation proceedings did not comply with A.R.S. § 41-1092.07(B) and (D). Ascending Roots had more than ample opportunity to secure counsel for the charter revocation hearing. Ascending Roots had more than ample opportunity to proceed without counsel pursuant Ariz. Sup. Ct. R. 31(d)(11). Ascending Roots was given ample opportunity to submit evidence, cross-examine witnesses, respond and present evidence and argument on all relevant issues. The requirements of A.R.S. § 41-1092.07(B) and (D) were clearly met. Ms. White declined to

1 represent Ascending Roots on July 16, 2008. Ms. White also absented herself from most of  
2 the proceedings of July 16, 2008, thereby declining to be present during the Board's case in  
3 chief. Despite the matter being set for a full day on July 16, 2008, the Board concluded its  
4 presentation of witnesses and exhibits at 11:30 a.m. The ALJ adjourned the hearing until the  
5 following day, thereby providing Ascending Roots with another opportunity to proceed with  
6 counsel or to represent itself under Ariz. R. Sup. Ct. Rule 31. On July 17, 2008, Ms. White  
7 proceeded on behalf of Ascending Roots, presenting evidence and argument.  
8

9 At no time was Ascending Roots, or Ms. White in particular, "expressly refused an  
10 opportunity to participate" in the charter revocation proceedings, as is alleged in its Motion.  
11 Ascending Roots had no basis upon which to believe that revocation of its charter was not  
12 being vigorously pursued. The pleadings and motions filed in this matter were clearly  
13 indicative of the matter moving forward to hearing. Moreover, by Ms. White's own  
14 admission to the ALJ, the Board had given her no assurances that the hearing was not going to  
15 go forward.  
16

17 A.R.S. § 41-1092.08(B) grants the Board the authority to accept, reject, or modify an  
18 ALJ's recommended decision. The Board's August 19, 2008 Order addresses every finding of  
19 fact and conclusion of law contained in the ALJ's recommended decision – specifically  
20 adopting, amending or rejecting each. When the ALJ's findings were rejected or modified,  
21 the Board provided an explanation for its decision. The Board specifically adopted the  
22 following conclusions of law by the ALJ:  
23

- 24 14. Ascending Roots' failure to provide the minimum hours of instruction to  
25 its seventh and eighth grade students evidences a lack of accountability,  
26 and deprived those students of hours of education to which they were  
lawfully entitled.

1 15. Ascending Roots' failure to provide a curriculum aligned with the  
2 Standards in social studies and science demonstrates either an inability  
3 or unwillingness by Ascending Roots to comport with statewide  
4 educational requirements. If any of Ascending Roots' students transfers  
5 to another school, the student's knowledge will be deficient, compared  
6 to his or her new classmates.

7 16. Ascending Roots' repeated attempts to revise the bell schedule, without  
8 ever providing the requisite instruction hours, is considered as a factor in  
9 aggravation. Likewise, its various inconsistent and contradictory claims  
10 about its course of instruction are considered as a factor in aggravation.  
11 Ascending Roots apparently will change its story as many times as is  
12 necessary to claim compliance with applicable statutes and regulations.  
13 It appears that Ascending Roots may not be capable of actual  
14 compliance.

15 17. In light of the scope and nature of Ascending Roots' violations, and the  
16 fact that Ascending Roots failed to remedy those deficiencies within the  
17 statutorily-prescribed cure period, the Administrative Law Judge  
18 concludes that Ascending Roots' Charter should be revoked. Ascending  
19 Roots' current efforts are too late and, in any event, insufficient to  
20 warrant further reprieve.

21 Revocation of Ascending Roots' charter contract is within the permissible range of disciplinary  
22 action that may be imposed by the Board. The Board could reasonably conclude, based on the  
23 record before it, that the nature and extent of Ascending Roots' proven violations warranted  
24 such action.

25 The "defenses and explanations" that Ascending Roots presents in its Motion for  
26 Rehearing or Review were either already considered by the Board, as evidenced in the record,  
or could have been presented during the charter revocation hearing. In any event, they fail to  
provide a basis for rehearing or review of the record. Accordingly, Ascending Roots' Motion  
for Rehearing or Review should be denied.

1 Dated this 1st day of October, 2008.

2 TERRY GODDARD  
3 Attorney General

4  
5 Kim S. Anderson  
6 Kim S. Anderson  
Assistant Attorney General

7 ORIGINAL Motion delivered this 1st  
8 day of October, 2008, to:

9 The Arizona State Board for Charter Schools  
10 1700 West Washington Street, Room 164  
Phoenix, Arizona 85007

11 COPY of the foregoing Motion  
12 mailed this 1st day of October, 2008, to:

13 Office of Administrative Hearings  
14 1400 West Washington, Suite 101  
Phoenix, Arizona 85007

15 Philip B. Whitaker  
16 STEGALL KATZ AND WHITAKER, P.C.  
17 531 East Thomas Road, Suite 102  
Phoenix, Arizona 85012  
18 Attorneys for Ascending Roots Scholastic & Athletic Premise, Inc.

19 By Kim Anderson / Roberta Curry  
20 296484/P0012008001108